

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JAMES E. POSEY

§

VS.

§

CIVIL ACTION NO. 5:09-CV-3

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

§

MEMORANDUM ORDER

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Plaintiff filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

Plaintiff objects to the Magistrate Judge's recommendation that Plaintiff's above-entitled and numbered social security cause of action be affirmed. Specifically, Plaintiff asserts the Magistrate Judge erred in rejecting Plaintiff's argument that the ALJ failed to give proper weight to the opinion of Dr. Muthappa, Plaintiff's treating physician. Plaintiff further asserts the ALJ failed to properly discuss the relevant factors listed in 20 C.F.R. §§404.1527(d) and 416.927(d) with regard to Dr. Muthappa's opinions.

After reviewing the transcript, the briefs of the parties, and the Report and Recommendation, the Court finds Plaintiff's objections are without merit. The Report and Recommendation recognizes the ALJ specifically referenced Dr. Muthappa's opinion that Plaintiff is unable to work until he gets his diabetes mellitus under control (Tr. 44). However, as noted by the ALJ, Dr. Muthappa also

reported that Plaintiff was consistently non-compliant, and he refused to return for followup treatments. Moreover, Dr. Muthappa found Plaintiff's neuropathy controlled with a duragesic patch (Tr. 235). The ALJ specifically stated she gave more weight to the state agency medical consultant because the findings reported by Dr. Muthappa did not support his opinions. The Court agrees with the Magistrate Judge that the ALJ fairly considered Dr. Muthappa's opinions. Although the ALJ did not specifically mention the factors listed in 20 C.F.R. §§ 404.1527(d) and 416.927(d) when weighing Dr. Muthappa's opinions, the Court is not convinced the ALJ failed to consider the factors or apply the applicable legal standards.

The Court also agrees with the Magistrate Judge that the medical records and opinions substantially support the ALJ's findings that Plaintiff was not disabled. The evidence of record suggested Plaintiff's neuropathy was treatable with good results. However, Plaintiff's treating and examining doctors continually noted his lack of compliance, suggesting he was disinterested in whatever level of symptoms he experienced. Dr. Muthappa specifically noted Plaintiff's consistent failure to take his condition seriously.

The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that the above-entitled Social Security action is **AFFIRMED**.

SIGNED this 20th day of August, 2010.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE